

NOTICE

This is a summary disposition issued under Alaska Appellate Rule 214(b). Summary disposition decisions of this Court do not create legal precedent and are not available in a publicly accessible electronic database. See Alaska Appellate Rule 214(d).

IN THE COURT OF APPEALS OF THE STATE OF ALASKA

HOLLY NELLINE HOLLEY,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-12649
Trial Court No. 3PA-16-00525 CR

SUMMARY DISPOSITION

No. 0051 — July 17, 2019

Appeal from the District Court, Third Judicial District, Palmer,
William L. Estelle, Judge.

Appearances: Michael L. Barber, under contract with the Public
Defender Agency, and Quinlan Steiner, Public Defender,
Anchorage, for the Appellant. Glenn J. Shidner, Assistant
District Attorney, Palmer, and Jahna Lindemuth, Attorney
General, Juneau, for the Appellee.

Before: Allard, Chief Judge, Harbison, Judge, and Coats,
Senior Judge.*

* Sitting by assignment made pursuant to Article IV, Section 11 of the Alaska
Constitution and Administrative Rule 23(a).

Holly Nelline Holley was convicted of driving under the influence after police received a report of erratic driving and a blood test revealed diazepam (commonly known as Valium) in her system. She raises three issues on appeal.

First, Holley argues that the evidence of impairment was insufficient. We disagree. When a defendant challenges the sufficiency of the evidence to support a criminal conviction, an appellate court is required to view the evidence, and all reasonable inferences based on that evidence, in the light most favorable to upholding the verdict.¹ Viewing the evidence in this light, the question is whether a reasonable juror could find that the State proved the defendant's guilt beyond a reasonable doubt.²

Here, the evidence clearly established that Holley exhibited symptoms of impairment. The State's expert witness testified that Holley had diazepam in her system, and that some of her symptoms of impairment were consistent with the amount of diazepam in her system. Based on this evidence, the jury could draw the reasonable inference that the diazepam Holley had consumed was a substantial cause of her impairment.³ Holley's contrary arguments on appeal rely on viewing the evidence in the light most favorable to her. We therefore hold that the evidence was sufficient to support her conviction for driving under the influence.

Next, Holley argues that the court should have granted her request for a mistrial after the investigating officer repeatedly referred to his qualifications as a drug recognition expert, in violation of a protective order issued by the court at the beginning of trial. The court, however, struck the offending comments from the record and offered

¹ *Johnson v. State*, 188 P.3d 700, 702 (Alaska App. 2008).

² *Id.*

³ *See Adams v. State*, 359 P.3d 990, 994 (Alaska App. 2015) (holding that the State must prove that a defendant's consumption of an intoxicating substance was a substantial cause of the defendant's impairment).

to issue a curative instruction (which Holley did not accept). Under the circumstances, the court's handling of the situation was not an abuse of discretion.⁴

Finally, Holley argues that even if a mistrial should not have been granted, we should overturn her conviction because evidence of the officer's qualifications as a drug recognition expert was irrelevant and prejudicial, and the admission of this evidence therefore violated Alaska Evidence Rule 403. As we just explained, however, this evidence was *not* admitted. Rather, the court struck this evidence from the record and offered to issue a curative instruction to the jury. We therefore find no merit to Holley's argument that this evidence was admitted in violation of Evidence Rule 403.

The judgment of the district court is **AFFIRMED**.

⁴ See *Roussel v. State*, 115 P.3d 581, 585 (Alaska App. 2005) ("We review a trial judge's decision on a motion for a mistrial for abuse of discretion.").